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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Review of Part 15 and Other Parts of the
Commission's Rules

Petition for Waiver of Section 15.37(k)
of the Commission's Rules

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ET Doc. No. 01-278

**PETITION FOR RECONSIDERATION OF THE COMMISSION'S ORDER
DENYING IN PART RADIOSHACK'S
PETITION FOR WAIVER OF SECTION 15.37(k)**

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**Petition for Reconsideration of the Commission's Order
Denying in Part RadioShack's Petition for Waiver of Section 15.37(k)**

RadioShack Corporation ("RadioShack"), by its undersigned attorneys and pursuant to Section 1.429(a) of the Commission's rules,¹ hereby submits this Petition for Reconsideration of the Commission's Order denying in part RadioShack's Petition for Waiver of Section 15.37(k). On August 28, 2002, the Commission issued an Order granting RadioShack and the retail industry a limited waiver extending the marketing deadline of Section 15.37(k) for one month to October 27, 2002.² On that date, under the rule established by the Commission, retailers are required to cease marketing all radar detectors that do not comply with new Part 15 emission limits as set forth in the Order. The Commission issued its August Order in response to a Petition for Reconsideration of the Commission's July Order and a Motion for Stay of that Order, both filed by Radio Association Defending Airwave Rights, Inc. ("RADAR"), as well as in response to RadioShack's Petition for Waiver.³ In making its determination the Commission did not adequately address the facts specific to RadioShack's current circumstances, as outlined in its waiver request and related filings. A review of the facts and analysis presented by RadioShack's filings reveal, as Commissioner Martin found in his dissent, that an extension of

¹ 47 C.F.R. § 1.429(a).

² *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, Order, FCC 02-238 (rel. Aug. 28, 2002) ("August Order"). Section 15.37(k) requires radar detectors to comply with Part 15 emission limits, as the result of the Commission's July 19th Order demonstrating that radar detectors cause interference with very small aperture satellite terminals (VSATs). *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, Rist Report and Order, FCC 02-211 (rel. July 19, 2002) ("July Order").

³ RADAR is a coalition of radar detector manufacturers including as its members BG Tech America, Inc., Bel-Tronics, Cobra Electronics Corp., Escort, Inc., SK Global America, Inc. and the Whistler Group.

the marketing deadline through January of 2003 for RadioShack presents no additional harm to the satellite industry or to the public interest purpose of the Commission's rule and will avoid needless harm to RadioShack.

I. Background

On July 19, 2002, the Commission released its First Report and Order requiring that radar detectors manufactured domestically or imported into the United States comply with radiated emission limits in the 11.7-12.2 GHz band under Part 15 of its rules, and that all radar detectors be certified to demonstrate compliance with these limits before they are marketed.⁴ As the Commission stated at the time, the purpose of this action was to reduce interference from radar detectors to very small aperture satellite terminals (VSATs). In its July Order, the Commission set forth time periods for the termination of manufacturing/importation and marketing of radar detectors – 30 days from the date of publication for manufacturing/importation, and 60 days from the date of publication for marketing.

In response to the Commission's July Order, RADAR filed a Petition for Partial Reconsideration and a Motion for Stay, seeking a change in the rule for both the manufacturing/importation deadline and the marketing deadline to December 31, 2002 and July 1, 2003, respectively.⁵ RadioShack separately filed a petition for waiver of the rule seeking an extension of the marketing deadline until March 30, 2003.⁶ This petition was not filed as part of

⁴ July Order at ¶1.

⁵ RADAR Petition for Partial Reconsideration and Motion for Stay, ET Docket No. 01-278, RM-9375, RM-10051 (filed July 26, 2002).

⁶ Petition for Waiver on behalf of RadioShack of Section 15.37(k) of the Commission's Rules.

the Commission's underlying rulemaking proceeding in ET 01-278, but rather as a waiver request. RadioShack did not challenge the validity of the underlying rule.

On August 28, 2002, the Commission issued a consolidated Order responding to the RADAR and RadioShack requests, denying RADAR's Motion for Stay of the deadlines, denying a change in the manufacturing deadline, and granting a limited extension of the mandatory deadline for 30 days to the entire radar detector industry. Subsequent to the Commission's Order, RadioShack submitted an Emergency Petition for Waiver seeking an additional 30-day extension of the marketing deadline for RadioShack. The purpose of that petition was to prevent irretrievable losses for RadioShack while the Commission reviews this Petition for Reconsideration. Those losses will result from business decisions required to be made by RadioShack regarding its October sales of radar detectors. RadioShack's emergency request was denied on September 3, 2002 by the Chief of the Office of Engineering and Technology.⁷

II. The Commission's Order Causes Disproportionate Financial Harm to RadioShack that is Not Balanced against any Countervailing Public Interest

In its August Order, the Commission does not question the special circumstances created by RadioShack's status as a private-label retailer nor the timing problems associated with trying to reconcile RadioShack's six-month distribution cycle and the Commission's unprecedented

⁷ Letter to Jennifer Blum from Edmond J. Thomas, dated September 3, 2002.

timeframe for compliance under the rule.⁸ RadioShack has taken all the steps available to it to attempt to comply with the rule. First, even before the manufacturing deadline became effective, RadioShack "halted the importation and manufacture of non-compliant radar detectors immediately when the Commission adopted the new emission limits."⁹ Second, RadioShack reduced its inventory by refusing to accept delivery of 28,000 radar detectors still in Asia that it had ordered and were manufactured prior to the publication of the Commission's rule on July 29, 2002.¹⁰ Third, RadioShack ordered compliant products as soon as the rule was issued. The Commission took no exception to these facts in its August Order.

Rather, the Commission denied RadioShack's waiver solely on the basis that granting the waiver would "allow numerous non-compliant radar detectors to be sold and undermine the policy that the rule in question is intended to serve" and that "[a]llowing more than 100,000

⁸ In its Opposition to RadioShack's Petition for Waiver, SIA suggests RadioShack made a bad business decision by continuing to order units during the Commission's rulemaking. Satellite Industry Association Opposition to Petition for Waiver on Behalf of RadioShack, at 10 ("SIA Opposition"). Such a suggestion is plainly wrong. As a retailer, RadioShack purchases and sells a wide variety of electronics products – many of which are subject to some form of regulation. RadioShack's interest is in purchasing and selling compliant products. If the rules applicable to those products change, RadioShack orders compliant products as soon as it is clear what new rules will apply. RadioShack is familiar with this problem generally and in the past where the rules applicable to CB radios, scanners, personal computers and the like have changed, the Commission has given the industry adequate time to change over to compliant products. RadioShack had no choice as a retailer but to continue to purchase what were then compliant goods to stock its stores. RadioShack obviously could not foresee months in advance of Commission action, what, if any, emission limits the Commission would create for new radar detectors or when those limits would be adopted, nor could RadioShack be expected to foresee that the Commission would establish an unprecedented and impossibly short timeframe for compliance.

⁹ Dissent of Commissioner Kevin Martin, August Order.

¹⁰ Addendum to RadioShack's Petition for Waiver of Section 15.37(k), Letter dated August 26, 2002.

additional non-compliant radar detectors to be marketed, and therefore operated indefinitely, after the cutoff date undermines the rule's purpose to prevent harmful interference to an authorized service."¹¹ In denying RadioShack's waiver request on this basis, the Commission failed to address the information that RadioShack submitted for the record and particularly in its August 26, 2002 Addendum to its Petition for Waiver.¹² RadioShack has no choice but to deplete its remaining inventory of radar detectors as quickly as possible by putting them into the marketplace prior to the Commission's marketing deadline whenever that deadline occurs.¹³ Thus, contrary to the Commission's holding, neither the satellite industry nor the businesses it serves will be subject to any additional interference if the marketing deadline is extended for a matter of months. The only question is how severe RadioShack's losses will be as a result of the Commission's decision.

III. On September 3, 2002, RadioShack Began to Incur Significant and Irretrievable Losses as a Result of the Commission's Rule

As stated in its August 30, 2002 Emergency Petition for Waiver, RadioShack had to make difficult decisions in early September regarding its October sales of radar detectors. RadioShack advertises its sales primarily through monthly flyers sent in the mail, which are printed one month in advance. RadioShack, therefore, must commit to sale prices at least one

¹¹ August Order at ¶ 17.

¹² In its Opposition to RadioShack's Petition for Waiver, the Satellite Industry Association appears to fear new interference from additional radar detectors, as well. However, it also contradicts itself by noting that RadioShack is likely to begin selling significant numbers of radar detectors regardless of the deadline established. SIA Opposition, at 13, Exhibit A.

¹³ As of August 26, 2002, RadioShack had approximately 85,000 units, not the 100,000 figure used by the Commission. RadioShack's Addendum to its Petition for Waiver was filed with the Commission on August 26, 2002 and was circulated to the relevant Commission offices. With the exception of Commissioner Martin, the Commission clearly did not rely on its facts.

month in advance. The deadline for printing the October flyers was September 3. Because the Commission denied its emergency petition, RadioShack has begun printing its October flyers to include discounts on its radar detectors of at least sixty percent.¹⁴ RadioShack will likely be forced to increase these sales and is considering all other options for depleting any remaining inventory remaining near the end of October – because it is significantly more cost effective to deplete inventory in the marketplace than it is to retrieve and destroy inventory. In total, RadioShack anticipates losses of several million dollars.

RadioShack's losses for its October sales of radar detectors are irretrievable since the company has committed to its sale prices. However, the Commission can still mitigate RadioShack's losses if it decides quickly to grant RadioShack additional time to deplete any remaining inventory. In the unlikely event RadioShack has any inventory remaining near the end of October, such a decision would allow the company to sell these units at its normal and customary prices. And if made quickly enough, it might allow RadioShack to reduce or eliminate discounts for at least part of the September sales period.¹⁵

IV. Conclusion

The Commission's concession that its Order will "involve financial cost to RadioShack" is not balanced against any countervailing public benefit.¹⁶ As the facts in the Commission's

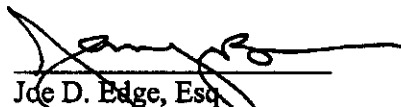
¹⁴ In addition, a sale of radar detectors published through in-store promotions and the internet is now in place for September.

¹⁵ RadioShack would be able to reduce or eliminate discounts in September, but not October, because the September sale prices were implemented only through the Internet and by in-store announcements, not by the flyers for which prices are fixed for a full month.

¹⁶ August Order at ¶ 17.

record demonstrate, the same number of additional RadioShack radar detectors will enter the marketplace, regardless of the deadline imposed. Thus, an extension of the marketing deadline will create no additional interference to VSATS users. RadioShack, therefore, respectfully requests that the Commission grant its request to extend the marketing deadline.

Respectfully submitted,



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